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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,086	03/25/2004	Read McCarty	004-02	8193
47360	7590	11/02/2005		
JAMES E. BRUNTON, ESQ. P. O. BOX 29000 GLENDALE, CA 91209			EXAMINER BAXTER, JESSICA R	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,086

Applicant(s)

MCCARTY, READ

Examiner

Jessica R. Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S Patent No. 6,241,110 to Hakim.

Hakim discloses an infant pacifier comprising: (a) a guard assembly (shield 30) for engaging the infant's face to prevent the pacifier from being accidentally swallowed or inhaled by the infant, said guard assembly comprising a generally U-shaped body constructed from a semi-rigid material (Column 3 lines 17-31) and having a front surface, a back surface, a bottom portion and a generally concave upper portion, said upper portion being constructed of a soft flexible material (Column 3, lines 47-51); and (b) a nipple (FIGS. 3-9) extending outwardly from said front surface of said guard, said nipple having an axial centerline concentric with said rounded bottom portion of said guard; further including a gripping handle (FIG. 13) extending outwardly from said back surface of said guard; wherein said nipple includes a bulbous forward portion and a rearward open portion (FIGS 3-9); wherein said body comprises a laminate construction comprising a first semi-rigid material and a second soft material affixed to said first semi-rigid material (Column 3. lines 17-

Column 4 line 10); wherein said first material comprises a substantially rigid plastic material and said second material comprises a soft, flexible silicone material (Column 3 lines 17-31 and 48-58); wherein the generally U-shaped body is provided with a pair of oppositely disposed openings (FIG. 13).

3. Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,695,869 to Fitzpatrick et al.

Fitzpatrick discloses an infant pacifier comprising: (a) a guard assembly (shield 200) for engaging the infant's face to prevent the pacifier from being accidentally swallowed or inhaled by the infant, said guard assembly comprising a generally U-shaped body constructed from a semi-rigid material (substrate 20) and having a front surface, a back surface, a bottom portion and a generally concave upper portion, said upper portion being constructed of a soft flexible material (substrate 30); and (b) a nipple (nipple 40) extending outwardly from said front surface of said guard, said nipple having an axial centerline concentric with said rounded bottom portion of said guard; further including a gripping handle (handle 60) extending outwardly from said back surface of said guard; wherein said nipple includes a bulbous forward portion and a rearward open portion (FIG 3); wherein said body comprises a laminate construction comprising a first semi-rigid material and a second soft material affixed to said first semi-rigid material (Column 2 lines 43-51); wherein said first material comprises a substantially rigid plastic material and said second material comprises a soft, flexible silicone material (Column 2 lines 43-51); wherein the generally U-shaped body is provided with a pair of oppositely disposed openings (FIG. 2).

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



jrB

Jessica R Baxter  
Examiner  
Art Unit 3733



EDUARDO C. ROBERT  
PRIMARY EXAMINER